No. 515

IN THE SUPREME COURT OF THE UNITED STATES

HORACE ESTOL WALKER, Petitioner,

versus

ARTHUR T. GALT, et al., Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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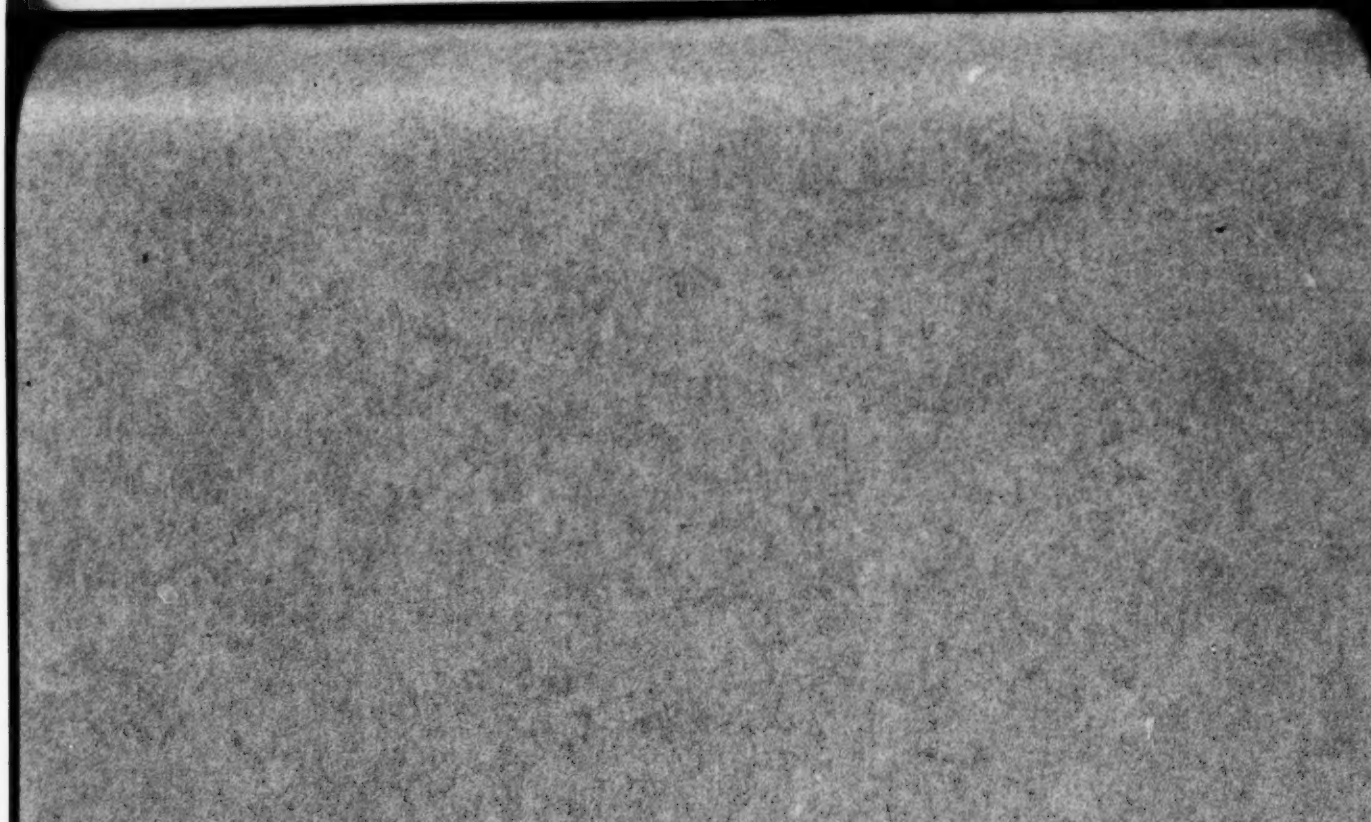

SUBJECT INDEX

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STATEMENT OF CASE

The respondents deem the statement of the case made by petitioner as being incomplete to the degree that it is inaccurate, and we accordingly set forth our own statement.

For several years petitioner had been desirous of purchasing a certain building owned by respondents (R. 131). The building was strategically located about the center of a large tract of land also owned by respondents. (R. 29, 43, 101, and 102). Petitioner knew that respondents would not sell to him under any circumstances or for any price (R. 131) because of personal animosity existing between them (R. 47, 48, 78, 97, 98, 99, 100, 105, 106, and Plaintiff's Exhibit 3 introduced in evidence at page 139 and 140 and

set out in the record at page 176-186), and because of petitioner's notorious reputation in the community of being engaged in the maintenance of houses of prostitution. (R. 30, 45, 46, 68, 69, 70, 75, 80, and 97). Petitioner then requested one Herman Meeks, a trusted friend of respondents' Florida agent, to effect the purchase in Meeks' name (R. 78, 120, and 131), the purchase price to be furnished by petitioner. (R. 89, 120). During the negotiations preceding the purchase, Meeks expressly represented to respondents' Florida agent that he, Meeks, was the purchaser; that he Meeks, was buying the property for a hotel to provide a livelihood for himself and family; and that he, Meeks, was going to open a high class restaurant in the building and beautify the grounds. (R. 51, 53, 79, 87, 88, and 91). Also during the negotiations the petitioner falsely impersonated himself as Meeks and by lies and trespass gained access to the building for the purpose of inspecting it. (R. 73).

The petitioner and his co-conspirator, Meeks, knew that the representations were false and made the representations for the purpose of deceiving respondents into executing the deeds in question (R. 78, 85, 86, 90, 131). A deed was executed from respondents to Meeks (R. 12-16), who then immediately executed a deed without any consideration to petitioner. (R. 191-196).

Not until after both deeds were executed and recorded did respondents or their agent have any notice or knowledge of the fraud, and the deed from respondents to Meeks would not have been executed by respondents for any price or under any circum-

stances if they had had even the least suspicion that petitioner was the real purchaser. (R. 66, 99, 106).

After the deeds were executed the petitioner took possession of the property and because of his unsavory and loathsome reputation the value and saleability of respondents' surrounding lands became seriously impaired and depreciated. (R. 33, 34, 38, 42, 43, 54, 74, 75, 95, 99, 102).

It was on account of the deeds being obtained by fraud that subject suit was instituted for their cancellation.

Immediately following the conclusion of the testimony and argument of counsel, the District Court rendered an Opinion (R. 141, 142). The District Court decreed that the deeds should be cancelled, that petitioner should surrender possession, that respondents should return the purchase price, and that petitioner should not be allowed reimbursement for any improvements he may have put on the premises. (R. 157-159). The Court of Appeals for the Fifth Circuit affirmed the decree of cancellation but reversed that part of the District Court's decree relative to reimbursement for improvements. (R. 208-213, 222).

ARGUMENT

THE SOLE QUESTION PRESENTED TO AND PASSED UPON BY THE COURT OF APPEALS, AND THE SOLE QUESTION THAT WOULD BE PRESENTED TO THIS COURT FOR DECISION, IN THE EVENT CERTIORARI WAS GRANTED, IS WHETHER THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE DISTRICT COURT'S FINDINGS OF FACT.

The District Court made detailed Findings of Fact pursuant to Rule 52 of the Rules of Civil Procedure. (R. 143-153). There is not a single one of these findings which is not supported by the overwhelming weight of the evidence.

The findings clearly show that the petitioner and his co-conspirator, Herman Meeks, were guilty of active and premeditated fraud in effecting the execution of the deeds. The transaction preceding the execution of the deeds was not a mere undisclosed agency transaction as counsel for petitioner would lead this Court to believe.

UPON THE EVIDENCE BEFORE THE COURT, THERE IS NOT A JURISDICTION IN THE UNITED STATES THAT WOULD NOT HAVE GRANTED RESPONDENTS THE SAME RELIEF AS DID THE DISTRICT COURT.

The law of Florida is quite clear that a defrauded grantor may secure a cancellation of his deed. **Stackpole vs. Hancock, 40 Fla. 362, 24 So. 914; Nixon vs. Temple Terrace Estates, 97 Fla. 392; 121 So. 475; Joiner et al vs. McCullers et al 158 Fla. 562; 28 So. 2d 823; McElroy vs. Gay, 155 Fla. 856; 22 So. 2d 154.** The Florida Supreme Court has also recognized that the misrepresentation of the identity of a prospective purchaser is a misrepresentation of a material fact. **Bell vs. Smith (1947) Fla. , 32 So. 2d 829.**

The case of **Volunteer Security Co., Inc., vs. Dowl, et al, Fla. , 33 So. 2d. 150,** cited in petitioner's brief page 19, has absolutely no application to the present question, since it concerned merely the proposition that the Courts will not add, by implication, a restiction to a valid deed. In the present case the attack is upon the validity of the deed itself and the uncontradicted evidence shows that but for the fraud the respondents would never have executed a deed regardless of the number of restrictions that were or may have been placed in it. (R. 66, 99, 106).

The sole authority relied on by petitioner, in which somewhat similar facts were involved, is the case of **Nicholson vs. Peterson, 18 Manitoba 106.** This decision is of no assistance to petitioner for two reasons:

First, the facts show that the grantor in the Canadian case was placed on notice that the sale was probably being made to the individual against whom the grantor afterwards voiced an objection, and in spite of this notice the owner proceeded to convey, the reasonable inference being that the owner was not too concerned with the identity of the purchaser. In the case at bar, the evidence is most conclusive that the respondents did not have even the least suspicion that Walker was the real purchaser and if any facts had been in possession of respondents or their agent that would give rise to such a suspicion there would have been no conveyance under any circumstances or for any price.

Second, the result reached by every Court in the United States passing upon facts identical to the present case, has been the same as that of the District Court and the Court of Appeals for the Fifth Circuit. See **Brett vs. Cooney, et al 75 Conn. 338; 53 Atl. 729; Thompson vs. Barry, et al, 184 Mass. 429; 68 N. E. 674; Adams vs. Gillig et al, 199 N. Y. 314; 92 N. E. 670; Williams et al vs. Kerr et al, 152 Pa. St. 560; 25 Atl. 618; Morrow vs. Ursini et al, 96 Conn. 219; 113 Atl. 388; New York Brokerage Co. vs. Wharton, 143 Iowa 61; 119 N. W. 969; Gloede vs. Socha, 199 Wisc. 503, 226 N. W. 950; Olson vs. Pettibone, 168 Minn. 414, 210 N. W. 149; Coan vs. Consolidated Gas, E. L. & P. Company, 126 Md. 506, 95 Atl. 151; Gwin vs. Tusa, 162 La. 949, 111 So. 339; 55 Am. Jur. 572, Sec. 96.**

The case of **Lenman vs. Jones, 222 U. S. 51, 56 L. Ed. 89, 32 S. C. 18** is not at all applicable inasmuch as it involved merely an undisclosed agency trans-

action. There was no active and definite fraudulent conduct on the part of the grantees such as in the case at bar and the grantor in that case knew that her immediate grantee was "only a figurehead." Furthermore the grantor in that case did not sustain any loss, whereas in the instant case the respondents suffered very severe damages on account of petitioner's vile reputation casting such an insalubrious shadow upon the remaining surrounding lands owned by respondents.

CONCLUSION

This case involves merely a question as to the sufficiency of the facts to support the Trial Court's findings. Each of the findings are supported by substantial evidence.

Every Court ruling on such a state of facts has unhesitantly granted full and complete relief to the defrauded grantor. Certainly it cannot be "contrary to sound public policy" to impose upon a fraudulent actor such a penalty.

It is urgently submitted that the primary reason for petitioner's application for certiorari is to secure additional time in which he can carry on his licentious and iniquitous trade upon respondents' premises.

Respectfully submitted,

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